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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 368

SHEET METAL WORKERS INTERNATIONAL UNION, AFL-CIO, LOCAL UNION 17,

Petitioner,

v.

AETNA STEEL PRODUCTS CORPORATION, J. W. BATESON CO., INC.,

and

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, LOCAL UNION NO. 33,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS AETNA STEEL PRODUCTS CORPORATION AND J. W. BATESON CO., INC.

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Statement

Respondents Aetna Steel Products Corporation and J. W. Bateson Co., Inc. submit this brief in opposition to the certiorari petition of the Sheet Metal Workers International Union, AFL-CIO, Local Union No. 17.

Nature of Controversy

This action involves a dispute between two building trade unions concerning the performance of certain construction work at the John F. Kennedy Federal Office Building in Boston, Massachusetts (Federal Project).

Parties Involved

Petitioner is a local union of Sheet Metal Workers in the Boston area (R. 3).*

Respondent, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union 33 (Carpenters) is a local union of carpenters in the Boston area (R. 4).

Respondent J. W. Bateson Co., Inc. (Bateson) is the general contractor to whom the Federal Government awarded the general contract for the construction of the aforesaid Federal Project (R. 4).

Respondent Aetna Steel Products Corporation (Aetna) is a fabricator of sheet metal products to whom Bateson awarded a sub-contract for the sheet metal work at said Project (R. 4).

Arbitration Agreement

The arbitration agreement involved herein is The Plan for the Settlement of Jurisdictional Disputes in the Building and Construction Industry which was signed on February 2, 1965 at the White House in the presence of President Johnson, hereinafter referred to as the "Arbitration Plan" (R. 143, Ex. 2).

Arbitral Machinery

The Arbitration Plan established arbitral machinery which, insofar as here relevant, consisted of the Local

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* Refers to Record Appendix to Appellant's Brief in the Circuit Court of Appeals.

Boston Board and the Washington Appeals Board. The Local Boston Board was the arbitral tribunal of original jurisdiction (R. 143, Ex. 2, p. 9) and the Appeals Board was the arbitral tribunal of appellate jurisdiction (*Idem*, pp. 4-6).

Appeals Board

The Appeals Board established by the Arbitration Plan consisted of the following persons:

> An impartial umpire;
>
> Two regular and two alternate labor members selected from the general presidents or elected general officers of the affiliated unions;
>
> One regular and one alternate employer member from experienced contractor members or officers of contractor member firms;
>
> One regular and one alternate labor member from the basic trades; and
>
> One regular and one alternate labor member from the specialty trades (R. 143, Ex. 2, p. 4).

Jurisdiction of Appeals Board

The Arbitration Plan grants to the Appeals Board jurisdiction at its own discretion to review any appeal from a decision of a Local Board, jurisdiction to prescribe its own procedural rules subject to the approval of the Joint Negotiating Committee and jurisdiction to render decisions that are final (R. 143, Ex. 2, pp. 5-6).

The Dispute

On February 16, 1965, Aetna gave all the sheet metal work at this Project to the Carpenters (R. 4), following past practice and the then existing agreement between the Carpenters and the Sheet Metal Workers (R. 143, Ex. 2,

pp. 34-36). On April 21, 1965, the Sheet Metal Workers protested to the Local Boston Board claiming to be entitled, not to all the work awarded to the Carpenters, but to the "installation of metal enclosures on venetian blinds pockets and convector covers" (R. 15). After a hearing (R. 16-17) the Boston Board ruled that the work "in question" was the work of the Sheet Metal Workers (R. 17-18). On May 11th, the Carpenters appealed to the Appeals Board (R. 18-20); on May 14th, the Sheet Metal Workers objected that the appeal was untimely (R. 21-22); and on May 24th, the Appeals Board dismissed the appeal as untimely under its own procedural regulations (R. 22-23).

On July 2nd, Aetna abiding by the April 27th decision, transferred the work from the Carpenters to the Sheet Metal Workers (R. 7-8) using the identical words of the Boston Board decision, i.e., "the installation of metal enclosures on metal venetian blinds pockets and convector covers" (R. 17-18). In July 15th, the Sheet Metal Workers, although they had previously claimed only "installation," put forth a further claim for "the unloading and distribution" of the material, and called a strike (R. 8).

The strike caused a serious work stoppage at the project; it also affected other projects and even involved the National Labor Relations Board (R. 32). On July 20th, all parties except the Carpenters asked the Boston Board for a clarification of its April 27th decision (R. 8). Instead of clarifying, the Boston Board stood pat on its prior decision and on July 20, 1965 rendered its second decision reading as follows:

> "All of the parties in interest be directed to comply with the April 27, 1965 decision of the Board." (R. 23-24)

It was from this second decision of July 20th that Aetna took an appeal (R. 24-25) in which appeal the Carpenters

joined (R. 25-27). In joining, the Carpenters requested the Appeals Board to review the entire dispute, stating:

> "In view of work stoppage by Sheet Metal Workers and other crafts which has halted progress of the work on this project, we further request that this entire matter be reviewed by the Appeals Board for purpose of eliminating problems and confusion created by the Boston Board and so that work may proceed without further interruption." (R. 27)

On July 27th, in order to end the strike pending the appeal, Bateson signed a longhand written agreement (R. 104-106) giving all the work to Sheet Metal Workers "until such time" as the Boston Board's order might be reversed (R. 27-29).

On August 12th, the Appeals Board after a hearing reviewed the "confused situation" and rendered a decision giving part of the work to the Sheet Metal Workers and part to the Carpenters (R. 31-33).

On September 10th, the Sheet Metal Workers filed their complaint in the District Court (R. 1) seeking an injunction, declaratory judgment and damages (R. 3-14).

Question Presented

Whether the Appeals Board exceeded its jurisdiction under the Arbitration Plan by allocating to the Carpenters the work with respect to curve window trim and base, filler pieces behind plaster columns and metal partitions (Petition, 8)?

Argument

The jurisdiction of the Appeals Board is governed by Section 5 of Article II of the Arbitration Plan (R. 143, Ex.

2, pp. 5-6) and by the Procedural Regulations of the Appeals Board (R. 143, Ex. 3, pp. 24-27).

Section 5 grants to the Appeals Board the right to review "any appeal" from a local board and the right of "discretionary" jurisdiction (R. 143, Ex. 2, pp. 5-6).

The Procedural Regulations grant to the Appeals Board the right to hear appeals from a "clarification" decision of a local board (R. 143, Ex. 3, p. 25). They also provide as follows:

> "6. In exercising its discretion . . . the Appeals Board will give consideration to such factors as the significance of the dispute, the frequency with which such disputes have arisen, the contribution a decision may make to the resolution of disputes and the improvement of relations, and the reason advanced for considering the appeal." (R. 143, Ex. 3, p. 26)

The work had originally been given to the Carpenters (R. 4), in accordance with the long standing agreement between the unions stipulating that the Carpenters were to do this type of work (R. 143, Ex. 2, pp. 34-36), and in accordance with custom and past practice at various other similar projects (R. 19-20).

Aetna's work under its sub-contract included (a) convector covers comprising the window sills, front pieces, and grills, (b) pipe enclosures, (c) venetian blind pockets, (d) window trim and bases on curved windows, (e) filler pieces behind plastered columns where required, and (f) metal partition walls. These were the items given to the Carpenters by Aetna's assignment of February 16, 1965 which generally included all other "related interior work" (R. 4). Most of these items are shown on the photograph, Exhibit 19 (R. 123) and all of these items were obviously before the Appeals Board.

In their protest to the Boston Board the Sheet Metal Workers claimed only two of these items, the venetian

blind pockets and the convector covers (R. 17). At the hearing before the District Court the Sheet Metal Workers contended that three items of work were involved (R. 99), adding the pipe enclosures and indicating that a typographical error might have occurred in the writing of the protest originally filed with the Boston Board (R. 108). But even with this addition, only three items were claimed by them; the remaining items of work were never claimed by the Sheet Metal Workers; they were at all times regarded as the work of the Carpenters.

The Boston Board decision of April 27th, failed to resolve the dispute between the unions. The controversy continued, a strike was called and a serious work stoppage ensued. The situation became heated and definitive action became essential to break the impasse and to allow the work to proceed (R. 32-33).

On July 20th, in the midst of the strike, the Boston Board was given an opportunity to clarify the situation, but instead refused to take any action. It stood pat on its previous decision of April 27th and in its second decision of July 20th relegated the parties to the *status quo,* thereby perpetuating the discord (R. 23-24). It was from this second decision that Aetna appealed to the Appeals Board (R. 24-25) and in which appeal the Carpenters joined (R. 25-27).

Recognizing its duty under the Arbitration Plan and Procedural Rules, the Appeals Board stepped into this vacuum and rendered a decision which allocated the work in part to one union and in part to the other (R. 31-33).

The only dispute involved was the Aetna sub-contract for sheet metal work at this project. The only decision rendered by the Appeals Board was with respect to the Aetna sub-contract at this project. Overlooking the fact that the Sheet Metal Workers had claimed only the "installation" of the items referred to in their original protest (R. 15), the Appeals Board awarded the Sheet Metal

Workers not only the installation, but also the "unloading and distribution" of the convector covers comprising the sills, front pieces and grills (R. 33). The remainder it awarded to the Carpenters (R. 33).

Under the circumstances of all the confusion created by the actions of the Sheet Metal Workers and the serious work stoppage which already had spread to other projects, the Appeals Board properly exercised the jurisdiction which the Arbitration Plan granted to it.

The Sheet Metal Workers themselves had invoked the arbitral machinery of the Arbitration Plan. The mere fact that the Appeals Board mentioned work to be done by the Carpenters, which the Sheet Metal Workers had never claimed, violated no rights of the Sheet Metal Workers. At no time did the Sheet Metal Workers claim that they were entitled to the curve window trim and base, filler pieces and metal partitions; nor do they so claim now, except by indirect inference not based upon fact.

By adjudicating all unresolved jurisdictional questions between the two disputing unions and clarifying all the work assignments relating to the Aetna sub-contract, the Appeals Board took salutary action to end the strike. This was the very aim and purpose of the Arbitration Plan which gave the Appeals Board discretionary jurisdiction in order to allow it to adjudicate the entire spectrum of any jurisdictional dispute in the construction industry.

On the appeal from the July 20th decision of the Boston Board, the Carpenters had specifically requested that "this entire matter be reviewed by the Appeals Board for purpose of eliminating problems and confusion . . ." (R. 27). They recognized that under the Procedural Regulations the Appeals Board was fully empowered to render a full and comprehensive decision disposing of the entire controversy (R. 143, Ex. 3).

In view of a typographical error in the petition, it should be noted that in making its decision of August 12, 1965,

the Appeals Board specifically observed that it was not readjudicating the Boston Board decision of April 27th, but was taking definitive action long overdue:

> "The Appeals Board in this decision has neither entertained an appeal from the decision of the Boston Board of April 27 nor has it sought simply to interpret the decision of the Local Board of April 27 which the Local Board has refused to do. Some definitive action, however, is long overdue to determine precisely how work shall proceed." (R. 32-33)

The opinions of the Courts below (Petition Appendix B, 3a-10a and 11a-22a) carefully summarized the facts and the principles of law which are applicable here. Little need be added to what the Courts below have already stated. However, in view of the contentions now being advanced in the petition herein, a review may be helpful.

As already noted herein and by the Courts below, the Appeals Board was delegated by the Arbitration Plan a wide and all inclusive jurisdiction designed to accomplish the Plan's objective of minimizing economic losses caused by jurisdictional disputes in the construction industry. At the very least, the jurisdiction granted to the Appeals Board was sufficiently wide to allow it to determine the entire controversy between these two particular unions on this particular project. It is submitted that the Appeals Board exercised its jurisdiction soundly and wisely in this particular case.

However, irrespective of the foregoing, it has been established by the decisions of this Court that once it has been determined that a dispute is subject to arbitration, the nature and extent of the dispute and all "procedural" questions which may grow out of the dispute and bear on its final disposition are matters that should be left to the determination of the arbitrator without judicial intervention *John Wiley & Sons, Inc.* v. *Livingston,* 376 U. S. 543, 557.

In the "Steelworker trilogy" (*United Steelworkers* v. *Warrior & Gulf Navigation Company,* 363 U. S. 574, *United Steelworkers* v. *American Manufacturing Company,* 363 U. S. 564, *United Steelworkers* v. *Enterprise Wheel & Car Corporation,* 363 U. S. 593), this Court noted that our National Labor Policy strongly favors the arbitration of disputes and the Petitioner's attempt now to contend that these decisions warrant the overturning of the Appeals Board's decision disregards their clear meaning.

In *Enterprise Wheel, supra,* like the instant case, the sole question presented was whether the arbitrators had exceeded their power. This Court, while refusing to review the merits of the arbitration award, observed per Justice Douglas:

> ". . . the question of the interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for, and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his." *United Steelworkers* v. *Enterprise Wheel & Car Corporation, supra,* at 599.

The very practical question of interpretation was further considered by this Court which observed that the arbitrator

> ". . . is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations." *Id.* at 597.

The realistic need for flexibility when attempting to solve industrial disputes was also noted in *Warrior & Gulf, supra.* There, at 578, this Court observed that a collective bargaining agreement is "more than a contract;

it is a generalized code to govern a myriad of cases which the draftsman cannot wholly anticipate." As a result, the arbitral process

> ". . . is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties." *Id.* U. S. at 581.

And in *Warrior & Gulf, supra,* at 582, 583, this Court noted that arbitration

> ". . . should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage."

It is submitted that the Circuit Court correctly held that the decision of the Appeals Board properly applied "the common law of the shop" applicable to the dispute and should not be disturbed by judicial intervention.

Conclusion

There can be no question that the controversy between the Carpenters and the Sheet Metal Workers was subject to arbitration under the Arbitration Plan. Indeed, petitioner so conceded by itself invoking the arbitral machinery. The decision of the arbitral appellate tribunal was well within its jurisdiction and wisely and fairly disposed of the entire controversy between the conflicting parties. Under settled doctrine, no judicial intervention is warranted and the arbitral tribunal should be left to determine its own procedural questions.

The decision of the Court below was cogent and proper and in accordance with the applicable decisions of this

Court. No conflict is involved and no proper ground is presented for the granting of certiorari.

WHEREFORE, it is respectfully submitted that the petition for certiorari should be denied.

Respectfully submitted,

August 17, 1966.

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